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SEP 14 2007

OFFICE OF PETITIONS

In re Application	:	
John Fruehauf	:	
Application No. 09/982,286	:	DECISION ON PATENT TERM
Filed: October 16, 2001	:	ADJUSTMENT
Attorney Docket No. 97,150-C	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed June 1, 2007, requesting correction of the initial determination of patent term adjustment (PTA) from nine hundred ninety (990) days to one thousand seventy (1070) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand seventy (1070) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 1, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is nine hundred ninety (990) days. On June 1, 2007, Applicant timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand seventy (1070) days.

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

Applicant asserts entitlement to a patent term adjustment of one thousand seventy (1070) days on the basis that the PTO improperly assessed Applicant a delay of eighty (80) days for filing an Information Disclosure Statement (IDS) on May 10, 2002, after Applicants had filed a response to a "Notice of Non-Compliant Amendment (37 CFR 1.121)" on February 19, 2002.

Applicant fails to state whether the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of nine hundred ninety (990) days based on an adjustment for PTO delay of one thousand, one hundred one (1101) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delays of eighty (80) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8) and five (5), six (6), and twenty (20) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 80 days is at issue.

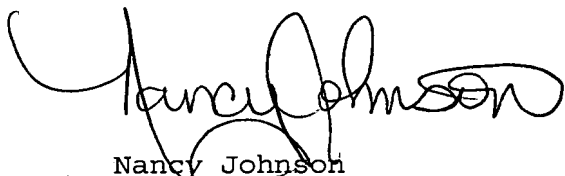
The application was filed with a preliminary amendment on October 16, 2001. The Office then mailed a "Notice of Non-Compliant Amendment (37 CFR 1.121) on January 17, 2002. Applicant filed a complete reply on February 19, 2002. Prior to the first Office action under 35 USC 132 being mailed, Applicant filed an IDS on May 10, 2002, and was assessed delay of eighty (80) days. However, Applicant should not have been assessed any delay for this filing. It was not supplemental to the February 19, 2002 reply.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **one thousand seventy (1070) days** (1101 days of PTO delay and 31 (20+5+6) days of applicant delay).

Receipt of \$200 fee under § 1.18(e) is acknowledged.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Nancy Johnson
Senior Legal Advisor
Office of Petitions

Enc: updated PAIR screen (2 pages)

Day : Thursday
Date : 9/13/2007

PALM INTRANET

Time: 19:55:04

PTA Calculations for Application: 09/982286

Application Filing Date:	10/16/2001	PTO Delay (PTO):	1101
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	111
Post-Issue Petitions:	0	Total PTA (days):	1070
PTO Delay Adjustment:	80		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
60	09/13/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	80		
53	03/01/2007	MAIL NOTICE OF ALLOWANCE			
52	03/01/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
51	02/27/2007	ISSUE REVISION COMPLETED			
50	02/27/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	02/20/2007	NOTICE OF ALLOWABILITY			
48	02/09/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
47	12/06/2006	DATE FORWARDED TO EXAMINER			
46	11/28/2006	RESPONSE AFTER NON-FINAL ACTION			
45	11/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
44	08/28/2006	MAIL NON-FINAL REJECTION			
43	08/23/2006	NON-FINAL REJECTION			
42	07/28/2006	PARALEGAL TD ACCEPTED			
41	07/27/2006	DATE FORWARDED TO EXAMINER			
40	07/25/2006	AMENDMENT AFTER FINAL REJECTION			
39	05/25/2006	MAIL FINAL REJECTION (PTOL - 326)			
38	05/24/2006	FINAL REJECTION			
37	05/10/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	05/10/2002	REFERENCE CAPTURE ON IDS			
35	05/10/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		80	13
34	03/27/2006	DATE FORWARDED TO EXAMINER			
33	03/20/2006	RESPONSE AFTER NON-FINAL ACTION		20	30

32	03/09/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
31	03/09/2006	DATE FORWARDED TO EXAMINER			
30.1	02/28/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
30	02/28/2006	RESPONSE AFTER NON-FINAL ACTION		6	28
29	02/28/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	11/22/2005	MAIL NON-FINAL REJECTION			
27	11/18/2005	NON-FINAL REJECTION			
26	11/03/2005	CASE DOCKETED TO EXAMINER IN GAU			
25	10/06/2005	DATE FORWARDED TO EXAMINER			
24	09/29/2005	RESPONSE TO ELECTION / RESTRICTION FILED		5	21
23	09/29/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	06/24/2005	MAIL RESTRICTION REQUIREMENT	1101		13
20	06/22/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
19	10/21/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	10/20/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	03/17/2003	CASE DOCKETED TO EXAMINER IN GAU			
16	12/16/2002	CASE DOCKETED TO EXAMINER IN GAU			
15	04/19/2002	RESETTING OF A CPA TO NEW CASE STATUS OF 030			
14	04/09/2002	DATE FORWARDED TO EXAMINER			
13	02/19/2002	RESPONSE AFTER NON-FINAL ACTION			
8	01/17/2002	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
6	01/17/2002	MISCELLANEOUS ACTION WITH SSP			
5	01/05/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	11/08/2001	APPLICATION DISPATCHED FROM OIPE			
3	11/07/2001	CORRESPONDENCE ADDRESS CHANGE			
2	10/25/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/16/2001	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

Back to [PALM](#) | [ASSIGNMENT](#) | [OASIS](#) | [Home page](#)